



Llywodraeth Cymru
Welsh Government

REPORT

Migrant integration: research on immigration legal advice Services

Research on the adequacy and availability of legal advice services for forced migrants living in Wales.

First published: 19 January 2023

Last updated: 19 January 2023

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What works well in the provision of immigration legal advice to forced migrants living in Wales?

What gaps exist in this provision (to include mapping the availability of current immigration legal advice services on offer to regular migrants in Wales)?

What challenges, barriers and/or facilitators exist in the provision of immigration legal advice to forced migrants living in Wales?

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Introduction

The aim of the research was to:

1. provide a detailed overview of current immigration legal advice services provided to forced migrants living in Wales
2. determine how well immigration legal advice provided to forced migrants living in Wales offers adequate and timely support; to include an assessment of:
 - what works well in the provision of immigration legal advice to forced migrants living in Wales, and what gaps exist in this provision (to include mapping the availability of current immigration legal advice services on offer to regular migrants in Wales)
 - what challenges/barriers and/or facilitators exist in the provision of immigration legal advice to forced migrants living in Wales
 - how well immigration legal advice provided to forced migrants living in Wales is offering adequate and timely support to those subject to varying immigration statuses, and those facing particular vulnerabilities, such as migrants that are children, LGBTQ+ and/or disabled
 - the impact of the UK Government's decision to reform legal aid provision on the availability and adequacy of immigration legal advice provided to forced migrants living in Wales
 - the role of Welsh Government, Local Authorities and public service partners in providing a strategic and co-ordinating lead to ensure sufficient, quality immigration legal advice services to forced migrants living in Wales
3. propose viable, evidence informed actions/recommendations for future policy development which could improve the immigration legal advice services provided to forced migrants living in Wales and address the gaps identified in this review

The research focuses on 'forced migrants'. The International Organisation for Migration defines forced migration as "a migratory movement which, although the drivers can be diverse, involves force, compulsion, or coercion" (IOM, 2019).

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This is clearly broader than only refugees, asylum seekers and people who are trafficked, although these are generally seen as the core groups. The report applies a broad definition of 'forced migrants', including:

- refugees, whether they applied for asylum in the UK or were resettled, including unaccompanied children, and those admitted via the Afghan evacuation, Ukraine schemes, or the visa scheme for Hong Kong residents with British National Overseas status
- asylum seekers, including those whose applications have been refused and who want to make a fresh asylum application or an alternative human rights application
- people granted humanitarian or other international protection
- victims of trafficking or modern slavery who are not UK nationals
- non-UK nationals in prisons who potentially face deportation action and wish to resist it
- victims of domestic violence whose immigration status depends on their relationship in the UK and who are therefore placed into precarious immigration status as a result of abuse, notwithstanding that they may have initially migrated as a matter of choice
- children and young people who were brought to or born in the UK without immigration status and who therefore live as undocumented people through no choice of their own

In all of these scenarios there is an element of compulsion or coercion, and constrained choice in relation to migratory movements, whether past or potential. People also move between categories so that, for example, a person whose asylum claim is refused may later be eligible to regularise their status based on private or family life or long residence in the UK, needing non-asylum immigration advice to do so. Much of this is outside the scope of legal aid, making it difficult to access advice or casework.

The research brief also requires a mapping of legal advice services available for regular migrants. Given that there is such a small pool of advisers in Wales, meaning that capacity is stretched for all immigration and asylum advice, it is important to take an inclusive view. The report aims to make clear which findings

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and recommendations relate to which group/s.

It is a criminal offence to offer immigration legal advice in the UK unless regulated by the Office of the Immigration Services Commissioner (OISC) or qualified as a solicitor, barrister or legal executive. The OISC framework is divided into two: Asylum and Protection, and Immigration, and advisers may hold one or both accreditations at levels one (basic advice only), two (advice and applications) or three (applications and representation, including appeals). Those wishing to do legal aid work must hold a contract with the Legal Aid Agency (LAA), which covers England and Wales. The scope of legal aid is very limited, covering asylum applications and appeals, some domestic violence and trafficking work, separated children's cases and, subject to an application for Exceptional Case Funding, cases where there is a risk of a breach of protected human rights if a person cannot access legal aid. Almost all non-asylum immigration work is outside the scope of legal aid (unlike in Scotland), so other income sources must be used to fund free advice.

The structure of the report is as follows:

- section 2 sets out the methodology adopted for the research, outlining the data collection strategies
- section 3 sets out key findings which emerged from the research
- section 4 discusses the conclusions, in the form of answers to the detailed research questions posed, and a brief discussion of limitations and further research which might be helpful
- section 5 details the recommendations for a range of bodies

Introduction to the methodology

The approach to this piece of research builds on that used for earlier research which focused on immigration and asylum legal advice across the whole UK and on the immigration legal aid market in England and Wales (Wilding, 2022). It relies on thematic analysis of a variety of data sets, as set out below.

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Advice and support organisation interviews

21 semi-structured interviews were undertaken with representatives of:

1. legal aid providers, barristers, and practitioner representatives
2. non-legal aid (accredited) advice organisations
3. refugee and migrant support organisations which do not give advice but regularly work with, signpost or refer advice users, including Migrant Help
4. local authorities and the Wales Strategic Migration Partnership
5. MPs and MPs' caseworkers

The prospective interviewees were selected because of their roles within the immigration and asylum advice sector, with a view to obtaining a geographical spread of organisations across Wales and organisations with a range of specialisms. There was some snowball sampling as one interviewee recommended another person that should be spoken to. These interviews were conducted via Microsoft Teams or phone, following interview topic guides which were designed to ensure all key areas of enquiry were covered, with scope to explore the interviewee's particular expertise or experience. Five interviews were with 2 or 3 individuals from the same organisation. Interviews lasted 30 to 90 minutes but the majority were approximately one hour.

In addition there were 2 group discussions, held remotely. The first was facilitated by the Wales Strategic Migration Partnership (WSMP), attended by 10 representatives from organisations including local authorities, advice organisations and support groups. The second was facilitated by the No Recourse to Public Funds (NRPF) Champions Network, attended by 6 representatives of organisations working in north Wales and supporting people with no recourse to public funds because of their immigration status, mainly survivors of domestic violence.

Advice provider data collection

In addition, detailed data was collected from three legal advice providers in Wales about demand for their services. This included an initial record of their existing caseload, including the number of legal aid and other files open and a breakdown of case types. They were then asked to record, over a four week period from February to April 2022, all new enquiries they received, noting the kind of work, funding type, referral source (if any), client's approximate location, whether the case was taken on and, if so, the date of first appointment or, if not, the reason why not. These providers were paid an hourly rate for collating the data, since it required a significant time commitment.

Advice user interviews

18 semi-structured interviews were carried out with advice users in Wales. All of the interviews were facilitated through 'gatekeeper' organisations which offer advice or other support to forced migrants, who passed on information about the research. Ten of the interviews were conducted by phone, or via a digital platform (paying for data costs where needed) and 8 were face-to-face in a centre which offers a variety of activities and services for refugees and asylum seekers. Interpretation was available (remotely) when required and respondents were compensated for their time and expertise.

The interviews focused on the advice user's views on the accessibility of advice, on what they considered good and bad about their experiences, and what would have improved the experience for them. Key issues were set out in an interview topic guide, with scope to explore what was important or significant for each individual interviewee. The interviews ranged in length from 10 minutes to 90 minutes, averaging 45 to 60 minutes, with the shortest interview being one where the person was still seeking immigration advice. Despite the limited information, this was useful because it gave an indication of how long people wait to see a legal adviser for the first time, and the obstacles to doing so.

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In addition, there was a 2-hour group discussion arranged by a support organisation, with around 10 attendees, of whom 6 shared experiences. This offered the opportunity to share some information about access to immigration advice in Wales and also served to build trust with participants, several of whom then arranged one-to-one interviews to discuss their experiences.

The advice user interviewees comprised seven men and 12 women (one interview was with a couple), from 15 different countries, including 8 from the Middle East and North Africa, 8 from Sub-Saharan Africa, 1 from Ukraine and one from Central America. There were 5 interviewees in the 21 to 30 age range; 4 aged 31 to 40; 6 aged 41 to 50; and 3 aged 51 to 60. Interviewees' locations in Wales largely reflected the main dispersal areas, with 5 in Cardiff, 8 in Newport, 2 in Swansea, 1 in Wrexham, one elsewhere in south Wales and 1 who was previously accommodated in Penally Barracks.

It was decided it would not be appropriate to interview current unaccompanied migrant children as part of this research. They are already subject to a large number of mandatory interviews as part of their asylum process and as looked-after children. It is difficult for them to fully understand the difference between a mandatory interview and a voluntary one, or to understand that the interview is not relevant to their immigration or asylum case. Instead the research drew on the experiences of adults in support roles.

All interviews were conducted according to similar ethical protocols as would apply to academic studies. Every effort was made to ensure respondents were fully informed about the project, the purpose, the client and topics; that their participation was voluntary; that they could pause or stop the interview at any time; and that they need not discuss topics which they did not wish to. Recruiting through gatekeeper organisations supports this, since many have protocols about asking their users to participate in research, and they were also able to support with ensuring consent was fully informed. The group discussion also enabled some of the interviewees to meet and observe the researcher before deciding whether to contact them to arrange an interview. Recruiting interviewees via 'gatekeeper' organisations means they can alert the interviewer to any known vulnerabilities or distress triggers, and also enables arrangements

for post-interview support to be made if required, if the interviewee shows any signs of distress.

Tribunal case lists

There is one hearing centre of the Immigration and Asylum Chamber of the Tribunal in Wales, namely Columbus House in Newport. Examining the work of this hearing centre gives an indication of the volume and nature of appeals work being undertaken in Wales and therefore offers an additional point of reference to the evidence on need and provision.

The daily list of hearings for all centres is [published on the GOV.UK website](#). There is no published archive of these, so they can only be obtained by downloading them from the website on the day in question. This report analyses a sample of 40 sitting days from January to April 2022. They are largely but not quite consecutive, as there were occasional days when the list was not published due to administrative error, and the researcher was on leave for one week. The lists contain information including the appeal reference, name of the representative firm, if any, and the language of any interpreter. The appeal reference indicates whether the case is an asylum or humanitarian protection appeal (PA), deportation appeal (DA), human rights appeal (HU), immigration appeal (IA), or a bail application, which has a different reference format.

There are limitations to the data. The name of the representative firm makes it possible to see how many people are represented by firms with or without a legal aid contract, and how many are unrepresented in the various appeal categories. The mere fact that a representative has a legal aid contract does not mean the particular client is receiving legal aid, particularly in non-asylum appeals. Not all appeals in the Newport hearing centre concern an appellant who lives in Wales, since the centre serves the South West of England as well, while appeals from appellants in northern Wales are usually assigned to the Manchester hearing centre. Nevertheless, it gives some indication of the amount and type of hearings and the extent of unrepresentation, by category, as a

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supplement to the other data sources.

Freedom of Information (FOI) requests and published data, literature and reports

FOI data was obtained on the overall Tribunal receipts and disposals and on peer review scores of legal aid providers through FOI requests. This supplemented FOI data obtained in earlier research (Wilding, 2021, 2022), including the number of legal aid cases opened by each provider office and statistics indicating the extent of need for immigration legal advice.

Literature and relevant reports were reviewed, which are referenced throughout. In particular, several organisations' responses to the Commission for Justice call for evidence in 2018 were reviewed, where relevant to immigration advice in Wales. These offer useful context and detail about access to legal advice from a range of perspectives.

Relevant published statistics include the number of accredited advisers on the Law Society's register of solicitors and caseworkers holding the Immigration and Asylum Law Accreditation, which is required for all staff doing legal aid work, and the number of barristers practising immigration law in Wales. Citizens Advice also **publishes data on the number of enquiries in different categories**, which can be filtered by geographical area, on its Tableau site.

Analysis

Thematic analysis was used to identify patterns and issues arising in the data, taking the research questions as the primary analytical framework, but also seeking to identify other issues emerging. The range of data sources helps to assure the quality and validity of this analysis.

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Need for immigration legal advice in Wales

It is difficult to reach a precise numerical estimate of demand, including unmet need, in any area, but the estimates in this subsection are based on the formula developed in the UK regional mapping project (Wilding, 2022). Although they are necessarily approximate, they far outstrip provision, as shown in the 2 sections on provision which follow.

The main indicators of need for legal aid immigration advice include: the number of people in asylum support within each area; the number of unaccompanied children in local authority care; the number of people granted asylum five years previously who are eligible for settlement in the current year; the number of people resettled under the various resettlement schemes, who arrive with a grant of asylum in place but may need other legal advice for travel documents, further family reunion and 5 year settlement applications; an estimated percentage of the total number of domestic violence applications; and the number of non-UK nationals referred into the National Referral Mechanism for a decision on whether they are victims of trafficking. We can anticipate that some Ukrainian nationals may require support to extend protection visas, but it is difficult to predict the extent of future need in this category at the time of writing. The number of foreign nationals in prison is also an indicator of need, as many prisoners need advice on deportation action, but the timing of this need depends on the length of sentence, while their entitlement to legal aid depends on an application for Exceptional Case Funding. In reality, almost all prison need is likely to be unmet in England and Wales, except in rare areas where there is a prison advice project.

Based on these indicators, the need for immigration and asylum advice which is clearly within the scope of legal aid in Wales in 2021 (ie. without an application for Exceptional Case Funding) was 3,646 cases (as of July 2021).

Legal aid provision can be measured as the average number of immigration and asylum matter starts opened per year over the past three contract years 2018 to 2021, which was 1,380 ie, around one third of eligible need.

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Subtracting need from provision gives a Primary Legal Aid Deficit of approximately 2,266 new cases per year. This includes trafficking, domestic violence, post-asylum settlement, as well as initial asylum applications and appeals, but does not include cases where a person seeking sanctuary was dropped by their representative between the Home Office decision and appeal.

There is also a need for advice outside the scope of legal aid, though again people may be eligible for Exceptional Case Funding. The scale of this need is estimated based on other research on the number of undocumented people in the UK as a whole (Jolly et al, 2020), divided by Wales' percentage share of the foreign-born population. This is 2%, according to Office of National Statistics data for 2021, drawing on local authority statistics including 'migration flows, non-UK-born and non-British populations, National Insurance number registrations, GP registrations, and births to non-UK-born mothers' (ONS, 2021). Although the total number may be an underestimate, similar factors are likely to affect estimates for all UK regions, so the percentage is likely to be reasonably reliable.

This gives an estimate of 9,000 undocumented people living in Wales, including 3,500 children (as of 2020). It is likely that all of these would benefit from advice on their situation and options, but approximately 60%, or around 5,400 people, may be eligible to make an application to regularise their immigration status, if they received advice and could afford the application fees or access support to apply for a fee waiver. Some of these have overstayed a visa for a variety of reasons, or were brought to the UK as children. The advice user interviewees included families who were refused asylum but were never returned, and obtained leave to remain when one of their children reached the age of seven. Combined capacity is likely to amount to far fewer than 100 cases a year.

Wales is also home to 34,640 people who were given pre-settled status under the EU Settlement Scheme (EUSS) as of 30 June 2021, some of whom will need advice or casework to help them upgrade to settled status during the 5 year period following the scheme deadline in 2021. Another 4,100 people received 'other outcomes' from applications to the scheme, as of 30 June 2021, such as refusal or rejection as invalid. The highest numbers of these are in

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Cardiff (950), Newport (660), Flintshire (420), Swansea (360) and Wrexham (350). Some will have reapplied and received status, the statistics do not separate these, but some will have no immigration status in the UK, or be in the process of re-applying out of time, and have lost their rights as a consequence. Citizens' Advice data shows that EUSS enquiries constituted nearly half of all immigration-related issues in March 2022, falling gradually (Citizens Advice, 2022). Some proportion of these will be clearly within the definition of 'forced migrants', but all have been pushed into a different immigration status by the UK's departure from the EU, and many will face greater vulnerability as a result of that new status, or their lack of status. It is also important to consider all need for free immigration legal advice collectively, since the overall pool of provision is so small.

As is the case across England as well, numerically the greatest need comes from those who are outside the scope of mainstream legal aid and outside the asylum system. This need is also geographically spread throughout Wales, whereas legal advice is mainly concentrated in the asylum dispersal areas. Yet provision in Wales outside the scope of legal aid is extremely limited. The consequence of this is that people remain in irregular status, without access to many services and entitlements, potentially suffering extreme poverty, destitution and homelessness, and are at risk of exploitation. This is clearly contrary to the public interest, regardless of the mode of entry to the UK, and avenues for provision of legal advice to this cohort should be explored.

Legal aid provision

There are 12 offices of nine separate **legal aid providers**. Of these, 5 (of 4 providers) are in Cardiff, 3 in Newport, 2 in Swansea, and 1 each in Barry and Wrexham. South Wales has previously been comparatively well-served with legal aid providers, although there was no provision at all in the rest of Wales. A single provider began working in north Wales in 2018, meaning that access improved significantly, but it remains precarious since it depends on a single individual. However, this position was rapidly changing at the time of the

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research with a serious decline in provision underway in the south Wales.

Paradoxically, the findings show both a shortage of legal aid provision in Wales (in the sense that demand outstrips supply) and a collapse in new case referrals to legal aid providers. This collapse in new referrals, combined with Home Office delays on existing cases, had caused a serious financial crisis for some of the Welsh legal aid providers at the time of the research. One provider had a 'nil return' for January 2022, because none of their legal aid cases had reached a stage at which they could bill, and the Legal Aid Agency expressed concern about the drop in their income.

Another firm withdrew all of its lawyers from Wales just before the research started because it was not receiving referrals of new asylum cases, describing the situation as 'a car crash'. It now employs one lawyer for 1 day a week in Wales. A third said it had laid off staff for the same reason, and was only able to survive by taking cases from outside Wales. A fourth had effectively stopped taking initial asylum cases, in favour of public law work. Support groups and local authorities reported that a fifth firm, which was not involved in the research, had stopped taking on legal aid work, but this could not be verified with the firm. These five organisations account for eight of the provider offices in Wales. Provider interviewees caution that it is very difficult to restore capacity within an area once it is lost.

It appears there are new asylum applicants coming into Wales, though this was intermittent during periods of COVID-19 restrictions, but there are two main reasons why new arrivals might not translate into referrals to local legal aid providers. Firstly, the normal procedure is for people who apply for asylum to spend around a month in Initial Accommodation in Cardiff before being dispersed within Wales or the South West of England. Recently, some have spent several months in contingency hotels, Napier Barracks or other parts of the UK before moving into dispersal accommodation and are more likely to have a representative before arriving in Wales. Several of the advice user interviewees had waited months (or were still waiting) to receive confirmation of receipt of s95 support, to passport them to legal aid eligibility. The use of hotel accommodation for months has been delaying this. Providers appear to vary in

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their willingness to take on clients before confirmation of s95 support, and one advice user even reported being told (wrongly) by a provider to get a new s95 confirmation, as theirs was 'old'.

Secondly, many asylum applications are reviewed for 'inadmissibility' under the procedure which replaces the Dublin III regulation since the UK left the EU. Over 6,500 cases were delayed for an admissibility decision in the first nine months of 2021. As there are no bilateral agreements in place with other European countries, returns are extremely unlikely in reality. In the nine months, there were only ten removals and over 2000 cases were placed back into the asylum process, while over 4000 cases remained in limbo, not having been allowed into the asylum process.

Home Office delay causes further problems for legal aid providers because, in normal circumstances, they are not paid until the end of the stage (the Home Office decision and the Tribunal determination of the appeal). Changes implemented during the pandemic allow them to claim payment after the asylum interview and any post-interview work, but both lawyers and advice users describe commonly waiting 12 to 18 months for an asylum interview, even longer in north Wales, and then waiting many more months for a decision, during which they are contractually required to keep contacting clients at least every 3 months to inform them that there are no updates. This additional work for providers is unfunded in England and Wales. As 1 South Wales provider explained:

“ I did a straw poll of our fee earners, and between three fee earners they're waiting for 80 interviews, and about 50 people are waiting for the Home Office to do something so their appeal gets heard. And in the meantime, we're not getting paid, except for disbursements. ”

This wider problem with Home Office delay is not unique to Wales. A message on a practitioner forum noted in April 2022 that increasing numbers of clients are waiting years for substantive interviews. Where previously the threat of applying for judicial review of the delay has resulted in clients receiving an interview date,

the solicitor commented that they now receive an assurance only that clients will be interviewed within the next 12 months. One of the advice users interviewed for this research had been waiting 2 years and 4 months for an interview and, in response to a pre-action letter, was informed they would be interviewed in 8 months' time, three years after arrival. The same practitioner noted the impact on provider firms, who can submit an interim bill after the substantive interview, but must then continue with client care work with no further payment until a decision is received. That means the providers who put in the most work, and continue with client care work after interview, suffer the greatest disadvantage in terms of unpaid work and cash flow difficulties.

Tribunal data for Newport confirms a sharp drop off in appeals work in 2020 to 2021, probably a combined result of slow decision making in the Home Office and a high grant rate for asylum applications [See Representation in the Tribunal, below]. Although the latter is obviously positive, there is a risk that there will not be enough provision left if the decision rate speeds up or reverts to a lower grant rate.

An emerging issue is that some support and local authority workers have been told that firms with offices in the South West of England are moving lawyers out of Cardiff and Newport and into those offices, at the encouragement of the Legal Aid Agency, to fill some of the capacity gap in the South West of England, which has recently lost a provider. It has not been possible to verify this, but it is extremely concerning if the capacity shortage in the South West of England is being addressed by effectively asset stripping south Wales. Clearer data on this may be available in September 2022 but it would be useful to monitor developments on this in the meantime.

Other free or low-cost provision

There is one organisation accredited at Level 3 of the Office of the Immigration Services Commissioner (OISC) regulatory framework to undertake advice, casework and representation on a non-fee charging basis, namely Asylum

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Justice (AJ). AJ has two OISC level 3 caseworkers of its 'own', one of whom is also the Legal Director, and relies quite heavily on freelance and pro bono solicitors to undertake the majority of the casework. The organisation has also recently employed a number of OISC level 1 and 2 trainees and instructs barristers for court appearances at reduced rates. AJ is based in Cardiff and provides its service from its office in Cardiff or through online methods. While having less face-to-face contact with clients in Swansea, Newport, and Wrexham, they have strong referral partnerships with other sector organisations in these localities through the Wales Sanctuary Services in addition to other informal partnerships.

There is one OISC Level 2 organisation in Wales (apart from Migrant Help) which is registered as fee charging but charges on a sliding scale and commits to keeping at least 25% of its work fee-free. This is Oasis in Cardiff, which is focused on supporting refugees and asylum seekers through a range of services, and uses a cross-subsidy model for its legal advice work, with the fees from private clients covering the free work. It offers a range of work but does only have one caseworker. It hosted the Home Office's Navigator scheme for a time, whereby two Home Office staff came to the centre and clients could make enquiries about the progress of their cases or obtain more general information without giving their name, reference number or address. This is reported to have been positive in that it gave people access to information they could not otherwise obtain from the Home Office, but has been suspended since early 2022 because of lack of Home Office capacity. There is currently no estimated date for this to restart.

Size and nature of the immigration legal profession in Wales

To undertake legal aid work, staff require the Law Society accreditation (even if they also have accreditation from the OISC or are qualified solicitors). There is a publicly available register of accredited caseworkers, while the Law Society publishes its register of solicitors by practice area, so it is possible to identify the

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number of staff working in these offices (though not whether they work full or part-time).

Table 1 below shows how many caseworkers, senior supervising caseworkers and solicitors are on the register at each of these offices, as of February 2022. One person may be both a solicitor and a senior supervising caseworker, so the two columns on the right may add up to more than the 'Total IAAS-accredited' for each firm. Only solicitors can have conduct of judicial review work, so any provider without a solicitor cannot do judicial review work. Note that this data comes from the published register, and may not reflect all partnership and consultancy arrangements.

Table 1: Workforce in legal aid provider firms in Wales, February 2022

Provider	Location	Total IAAS accredited	Senior supervising caseworkers	Solicitors
Albany	Cardiff	4	3	2
Crowley	Cardiff	2	1	1
MLP	Cardiff (2 offices)	1	1	0
NLS	Cardiff	4	3	3
Fountain	Newport	2	1	1
NLS	Newport	1	0	0
Qualified	Newport	10	3	5

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Provider	Location	Total IAAS accredited	Senior supervising caseworkers	Solicitors
Virgo	Barry	1	1	1 (consultant employed elsewhere)
Duncan Lewis	Swansea	3	1	2
NLS	Swansea	2	2	2
Eastgate	Wrexham	1	1	0
Totals		31	17	17

Additionally the Welsh Government currently funds a solicitor and a caseworker who are employed at Newfields, in Cardiff, to support with EUSS applications and appeals. Newfields does not do legal aid work but does undertake this element of publicly funded legal support for EU migrants in need of it. As above, Asylum Justice has only one full-time employee, and relies on freelance solicitors to undertake casework, while Oasis has one accredited caseworker. This is the extent of the non-legal aid workforce doing free and low-cost advice work in Wales.

The Welsh immigration Bar is very small and Welsh providers have to rely additionally on barristers travelling from England. The Bar Council's **'Demographic Dashboard' figures** show that only 7 barristers with a primary practising address in Wales have immigration as a main practice area, as of March 2022. All of these are in Cardiff. Not all will undertake legal aid or claimant-side work, though it appears that the Welsh immigration bar is less split into Home Office and claimant-side work than that in England. This total is down from 10 in March 2019, 9 in March 2020 and 8 in March 2021. There are 21 barristers with public law as a main area of practice and a primary practising

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address in Wales, almost all in the south. This is a significant increase, up from only 1 in 2019, 15 in 2020 and 19 in 2021, indicating that barristers are either expanding into public law or are increasingly likely to identify it as a core part of their practice. However, as discussed later in the report, there are few immigration public law challenges lodged in Wales.

Caseloads and new enquiries

The purpose of collecting data on providers' existing caseloads and four weeks' worth of new enquiries was to give a much clearer picture of how much work they are holding at a time and the number, nature and geographical range of demand for their work, as well as illustrating the referral networks around each provider.

Provider 1 (P1) had a starting caseload on 28 February 2022 of 179 cases. Table 2 below shows the breakdown of those cases.

Table 2: Starting caseload for Provider 1, 28 February 2022

Type of case	Number of cases
Asylum Appeal	45
Certified Claim	1
Citizenship Application	1
Citizenship Application, Advice Only	2

Type of case	Number of cases
DV Spouse Application	1
EU Settlement Scheme Application	1
EU Settlement Scheme Appeal	1
Fresh Claim	50
Fresh Claim/Trafficking	1
Further Leave Application	25
Settlement Application Indefinite Leave to Remain Application	5
Initial asylum claim	2
Initial leave application	6
Naturalisation	2
Other, Criminal Charges	1
Other Family Reunion (Complex)	22
Refugee Family Reunion	8
Refugee and Complex Family Reunion	1

Type of case	Number of cases
Travel document application	4
Total	179

Clearly the largest demand comes from asylum appeals and fresh asylum claims. This is notable because these cases, at least the appeals, should qualify for legal aid, and P1 operates outside legal aid. At that time it also had a waiting list of 24 cases, comprising 99 fresh claims, 9 complex family reunion cases, 3 refugee family reunion cases, 2 further leave applications and 1 initial leave application. At the start of the data collection period, P1 had just reopened for new referrals, after a 6 month period of being unable to accept new referrals due to capacity issues within the organisation. This data is particularly useful as it indicates the gaps in legal aid provision, both where matters are out of scope and where they are in scope but unlikely to be taken on by legal aid providers, such as fresh asylum claims and exceptional case funding matters, because they are complex, long running or underfunded.

P1 then received 27 new enquiries in the 4 week data collection period. Seven of the new enquiries concerned fresh claims, 1 including a trafficking issue and another at appeal stage, while 1 other enquiry was for an asylum appeal. Two concerned initial asylum applications, and were referred to legal aid providers. There were 4 enquiries for support with further leave to remain applications and 2 for indefinite leave to remain (settlement). There were 2 refugee family reunion and 5 other complex family reunion matters. Almost all were in Wales, with 12 in Cardiff, 7 in Newport, 5 in Swansea, and 2 in Wrexham. The remaining 1 was in Bristol. The service is accessed online or through referrals from other organisations who do have face-to-face drop-ins with clients.

Of those new enquiries, 5 were allocated a lawyer, 3 were given advice only and 4 were referred out for legal aid advice. The other 15 were added to the waiting list. Two had an expected waiting time of 1 month or less, 8 had an estimated

waiting period of 2 to 3 months and 5 were likely to wait 4 to 6 months. The waiting list reduced significantly during the pandemic, because of shifts in the pattern of work for legal aid providers and the Home Office's processes, but has been growing again more recently, forcing the organisation to (try to) stop accepting new referrals.

Provider 3 (P3) had an initial caseload on 14 February 2022 comprising 45 open legal aid files and 12 privately paying matters. The legal aid files comprised 18 initial adult asylum applications, 3 unaccompanied children's asylum applications, 1 asylum appeal, 6 fresh asylum claims, 3 domestic violence applications, 12 applications for settlement, and 2 Exceptional Case Funding matters.

P3 then received 17 new enquiries over the 4 week data collection period. Although P3 is in a dispersal area, only 1 of the enquiries concerned an asylum case that was not related to Ukraine. That case concerned an unaccompanied child, who was referred by their local authority in another area of Wales from where P3 is located. There were a further 4 asylum-related enquiries from Ukrainian nationals, 3 in P3's area of Wales and one still in Ukraine. P3 received 3 domestic violence related enquiries. In all, 7 enquiries were likely to attract mainstream legal aid, one was pro bono and one would involve an application for Exceptional Case Funding. The remaining 8 were privately funded and included applications for visas as skilled worker, spouse or student, citizenship, indefinite leave to remain and citizenship, and under the long residence rule. The only case turned away was a deportation matter, where the client was in a prison in England and P3 did not have capacity to take it on.

Provider 2 (P2) received 52 new enquiries during the 4 week period. Notably, only 5 of these were from (or on behalf of) clients living in Wales, and all of these were privately funded. A further 6 were in an unknown location when they were referred, 1 by an organisation in Swindon and the other 5 by Care4Calais, indicating they are likely to be in Napier Barracks or a hotel. P2 did not turn away any of the enquirers but made appointments for them in one to 3 weeks' time, at which they would make a firm decision on whether to take the client on. All but 6 of the enquiries concerned asylum, or asylum and trafficking, and the

referrals came from organisations and local authorities in Bristol (2), Swindon (8 referrals from three different organisations), Reading (2), Cheltenham (4), London (3), Manchester (1) and 21 from Refugee Action in Colchester, Essex.

This supports providers' accounts of a collapse in referrals of asylum cases from within the main dispersal areas in south Wales, and surviving by taking remote referrals from England. It also underlines the serious shortage of legal aid provision in the South West of England and the East of England, which compels support organisations there to rely on referring to providers far from their own area.

One consequence of demand outstripping provision so significantly, and of Home Office delays, is unsustainable demand for MPs and their caseworkers to intervene in, or follow up on, immigration and asylum cases. One MP's caseworker had dealt with 630 immigration and asylum cases over the past year, which was eight percent of the MP's total caseload. Another, in a non-dispersal area, had dealt with 103 cases between January 2021 and April 2022, excluding Afghan, Syrian and Ukrainian refugee cases. Much of this casework required them to make enquiries via the MP hotline in the Home Office, through which the Home Office is obliged to reply within 28 days. This enables MPs to obtain up-to-date information on constituents' cases which they cannot get elsewhere. The majority of this can be seen as failure demand resulting directly from a shortage of immigration and asylum legal advice (especially outside the scope of legal aid) and from dysfunction in the Home Office, which fails to provide information directly, or to make decisions promptly (for a detailed discussion of failure demand, see Wilding (2021) Seddon (2008) who coined the term 'failure demand').

One MP commented that often clerical errors within the Home Office cause 'heartache and misery' that is only resolved when an MP 'hassles' the Home Office for a resolution: in 1 case, this included raising the same matter 3 times in Parliament. This is not unique to Wales, but this unsustainable level of demand is an important part of the overall context in which people access immigration legal advice (or do not).

Representation in the Tribunal

The analysis of the daily hearing list for the Newport hearing centre shows that there is a significant level of unrepresentation and reliance on non-legal aid organisations, whether pro bono, grant-funded or private, including for asylum, human rights and bail cases. Because the Newport hearing centre serves south Wales and the South West of England, it is not possible to restrict the analysis to Wales, or to cover the whole of Wales; appellants in north Wales would most likely go to the hearing centre in Manchester. Nevertheless, it gives a reasonable indication of what is happening in south Wales in terms of representation at the Tribunal.

The Tribunal case list sample for the hearing centre at Newport covered 40 working days between January and April. There were 271 hearings in total, averaging 7 per day.

There were 33 protection appeals (essentially asylum) and of these:

- 8 were unrepresented (24%)
- 14 were represented by firms with a legal aid contract (42%)
- 3 were represented by private-only firms (9%)
- 8 were represented pro bono by Asylum Justice (24%)

There was 1 deportation appeal, and the appellant was unrepresented.

There were 25 human rights appeals, of which:

- 6 were unrepresented (24%)
- 8 were represented by firms with a legal aid contract (32%)
- 11 were represented by private-only firms (44%)

In relation to the asylum appeals, it is particularly noteworthy that Asylum Justice (AJ) represented almost a quarter of all appellants over the 40-day sample. Given that some of the appellants will have come from the South West of England, AJ's percentage share of the Welsh appeals heard at Newport is even

higher. These appeals are all, on the face of it, eligible for legal aid, yet the appellants had to rely on free representation from an organisation operating outside the legal aid scheme. Some will have been represented by another organisation and 'dropped' at some stage, usually between Home Office refusal and the appeal hearing, often on the grounds that there is insufficient merit, yet AJ has an average success rate of 64% on the appeals in which it represents (2014 to 2021), indicating that they did have sufficient merit. AJ represented in 48 appeals in 2019, the last pre-pandemic year, 23 in 2020, and 20 in January to November 2021, which gives an indication of the volume of meritorious cases in Wales being dropped by legal aid representatives (who may not be in Wales) before appeal.

By way of context, in an earlier 20-day sample in 2016, there were 66 asylum appeals heard in Newport, of which:

- 6 were unrepresented (9%)
- 48 were represented by an organisation which had a legal aid contract (73%)
- 11 were represented by a private-only firm (17%)

One had a pro bono representative.

Despite a drop in the number of asylum appeals heard at Newport since 2016, the percentage of appeals conducted by a representative holding a legal aid contract has fallen dramatically (from 73% to 42%), while unrepresentation and pro bono representation (including Asylum Justice), have risen in the intervening six years. This suggests a loss of legal aid capacity in south Wales.

There were 132 immigration appeals in the 2022 sample, which covers a broad range of issues but will include cases where a person with no leave to remain has applied under the parent, partner or long residence routes. The scope of legal aid in relation to this category is so limited that it is not very useful to note whether the representative has a legal aid contract or not, but it is worth noting that Asylum Justice also represented in one of these cases.

Additionally there were 36 bail applications over the 40 days in the 2022 sample,

of which:

- 9 were unrepresented (25%)
- 9 were represented by firms with a legal aid contract (25%)
- 15 were represented by private-only firms (42%)
- 3 were represented pro bono by Bail for Immigration Detainees (BID) (8%)

Bail applications are within the scope of legal aid, subject to the financial means test. The number of bail hearings has fallen, from 46 in the 20-day sample in 2016 to 36 in the 40-day sample in 2022, but there is less change in the pattern of representation than for appeals. In the 2016 sample, 10 (22%) were unrepresented, 19 (41%) were represented by a provider with a legal aid contract, and 18 (39%) were represented by a private only firm. A former member of Cardiff University's Bail Observation Project explained that the reduced number of bail hearings is mainly due to the closure of the detention centres whose bail applications were most often assigned to Newport.

As a comparison, Scotland has a separate legal aid system from England and Wales. Non-asylum immigration matters remain in scope in Scotland and there are no contracts, so any firm which is registered to do immigration legal aid work may do as much or as little as they wish. There is a Tribunal hearing centre in Glasgow, which hears all first-instance matters for Scotland. As in England and Wales, there is a means threshold, so it is impossible to be certain that any given appellant received legal aid, simply because their representative does legal aid work, but a large majority of asylum and bail applicants are likely to be financially eligible for legal aid.

Over the 40-day sample in January to April 2022, there were 48 asylum or protection appeals at the Glasgow hearing centre, and firms registered for legal aid work represented the appellant in 83% of them. Only six percent (three appellants) were unrepresented, while private-only firms represented in four cases (8%). There were ten appeals against deportation, with 60% of appellants represented by a firm registered for legal aid, while private firms represented 20% and the same percentage were unrepresented. Similarly in human rights appeals, 68% of 38 hearings had a representative who is registered for legal aid,

with 21% and 8% respectively represented by private-only firms or unrepresented. Out of 37 bail hearings, 27 applicants (73%) were represented by firms registered for legal aid, with only 2 people (5%) unrepresented and 7 (19%) represented by private-only firms. One had a representative based in Northern Ireland, indicating that they were transferred from the short-term detention centre in Belfast.

Clearly Wales does not have an option of developing its own legal aid system in the short term, but these significant differences in representation patterns indicate what might be achievable with changes to the existing rules on funding and scope of legal aid.

Public law in Wales

The research suggests that there is a shortage of provision for public law in Wales and a lack of awareness around public law remedies. Legal aid providers with an immigration contract can undertake related public law work, but only if they are solicitors. OISC-accredited advisers cannot go beyond pre-action work, meaning there is no judicial review capacity at all outside south Wales. Public Law Project employs a specialist Wales lawyer, having recognised the small number of judicial review claims that were being issued in Wales, but that lawyer does not focus on immigration work, nor do the few other public law providers in Wales.

This gives rise to three problems which were raised by interviewees. First, charities and other support organisations have limited awareness of public law remedies and are more likely to think about ways of supporting individual clients rather than challenging illegality systemically in the courts. One example was the delays in receiving asylum support payments on Aspen cards in 2021: charities attempted to support individual clients with funding, but did not challenge the Home Office's failure to provide the support they were entitled to. Another charity did not know where to go for support around serious disrepair in asylum housing which was affecting its users. This causes obvious disadvantage to

forced migrants (and others) living in Wales. As one put it,

“ I see terrible things in terms of people’s housing needs, for example when they’ve been in a house with a few centimetres of water on the floor and it’s taken over the regulated amount of time to fix, or there’s a broken door and they have a toddler in the house,... where housing complaints get to the point that they should be challenged legally but people don’t have access. ”

That organisation suggested that it would be useful to have a toolkit to support understanding of what matters could be challenged by judicial review and how to access the right advice to do so. There is one lawyer from Public Law Project undertaking public law challenges on asylum accommodation, with a particular focus on Wales, but this is inevitably limited in capacity.

A second potential consequence is that public bodies within Wales may not experience the same sense of scrutiny as those in certain parts of England (though not all), where there is an expectation that unlawful decisions will be challenged because there is an adequate supply of public law practitioners. In housing, Shelter was said to have improved this, but this is less the case for other issues like care and support packages. Welsh local authorities were praised for being generally more likely to respond positively to an individual challenge and not ‘fight it tooth and nail’, but this can mean that there is only a remedy for a single individual or family, rather than systemic change in the way a policy is applied.

A third is the lack of public law capacity on matters devolved to Wales, and a lack of development or interpretation on matters of Welsh law. A particular example in the migration context is age assessment, where a local authority or the Home Office disputes that someone is a child. The Children Act, which applies in England, does not apply in Wales, and therefore the guidance and case law on age assessment in England does not automatically apply to Wales. But there are no community care providers in Wales which undertake age assessment challenges, meaning that those in Wales must rely on lawyers in

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England, who are unlikely to be familiar with the Welsh legislation, which may frustrate the intentions of the Welsh legislature.

Quality

Alongside the availability of legal advice provision, quality was the most commonly-cited concern from interviewees, both advice users and professionals. This falls into 6 main issues:

1. Client care and communication: Both support organisations and users describe feeling that the legal representative was rude, did not communicate clearly, or did not respond promptly or at all. This included those paying privately. One provider was particularly praised for good and prompt communication, and advice users gave a number of examples of this. Support interviewees recognised the impact of legal aid cuts on quality for those reliant on legal aid funding, which affect all legal aid providers throughout England and Wales.
2. Minimal work: Similarly there were complaints (including from other lawyers) that certain representatives did minimal work on cases, even failing to submit evidence the client gave to them in some cases. One support organisation referred to poor quality witness statements. This is partly incentivised by the legal aid regime for England and Wales, as discussed in detail in Wilding (2021).
3. Merits failing and 'dropping' clients: Legal aid providers have to assess the 'merits' or prospects of success, before granting legal aid for a case, or the next stage of a case. This is particularly relevant when receiving a Home Office refusal of asylum and deciding whether to proceed to appeal. Two of the advice user interviewees had experienced being dropped by solicitors after the Home Office refusal, sometimes very late, while others had friends who experienced this. One went on to lose the appeal with a privately paying solicitor and had to make a new application later (also paying privately). The other managed to get their appeal adjourned, succeeded in finding a new representative with the support of the Welsh Refugee Council, and won their

appeal, despite the first representative telling them the case was too weak. Again, this is also a problem in England: there is no systematic review of cases which end in this way to ensure they are properly assessed, and the Legal Aid Agency has been consistently unable to provide data on the number of cases which providers drop on merits grounds. However, support organisations, local authorities and lawyers all felt that cases were being wrongly refused on the merits by providers, which is strongly supported by Asylum Justice's high success rate on these appeals (winning over 70%). Some interviewees believed that legal aid providers drop complex cases (which are financially unviable for them) on the assumption that AJ will pick them up. This is described by several interviewees as diverting AJ from its core work and forcing it to spend much of its time and funding dealing with appeals which should be covered by legal aid. As set out above [Representation in the Tribunal] AJ represented in almost a quarter of asylum appeals heard in Newport in the 40-day sample in January to April 2022. It is difficult to tell whether merits failing of meritorious cases is more prevalent in Wales, or is merely exposed by the existence of an organisation like AJ when it might otherwise go unnoticed.

4. Interpretation: One user gave an example of being refused asylum and the lawyer refusing to grant legal aid for an appeal because of contradictions which arose from errors in interpretation. Once this was identified, another lawyer took on the case, but only after the intervention of the Welsh Refugee Council. Some providers avoid using interpreters because of the length of time or the administrative burden involved in getting paid for the interpreter costs. Again this is not specific to Wales, but causes real problems.
5. Unwillingness and lack of support to make complaints: Support workers felt clients are often unwilling to complain about poor quality advice because 'their lives are in their [advisers'] hands', because they fear that complaining will affect their immigration decision, or because they have other, more urgent, priorities once they discover that they have received poor quality advice. One user had received different advice from two different (privately paid) solicitors and pointed out that she had no way of knowing which one was wrong. The legal aid rules in England and Wales prevent clients from changing representatives except in very limited circumstances, unlike in

Scotland, so they are compelled to stay with representatives they no longer trust, unless they can pay. Independent information about the right to complain, the appropriate standards of service to expect, and the consequences of complaining should be made available, and there needs to be funding to cover support with complaints.

6. Private advisers overcharging or offering poor quality work: Some advice users described having paid for legal advice which was of poor quality. In one case, the user had paid for a consultation, and later forwarded a letter to the firm, who asked her to pay for a second consultation, only to tell her that the letter meant they could not help her. She was not given receipts for either consultation. Another had a direct access barrister whom she found rude and unprofessional, who regularly failed to respond to her, and asked her to research the legal case law herself. Yet there was a perception that paying would guarantee a better quality of service than legal aid or free services, meaning some chose to pay private firms for refugee family reunion applications that the Red Cross would (at some points) do free.

The only measure of substantive quality of immigration legal aid work is through the peer review scheme. Peer review data for all providers in Wales was obtained via a Freedom of Information request. Peer reviews are scored from 1 (excellence) to 5 (failure in performance). Grade 4 is 'below competence' and generates a further review within 6 months, and a second grade 4 or a grade 5 results in immediate contract termination.

There are nine separate organisations with at least one office in Wales, and scores are aggregated across all of a provider's offices in England and Wales. Three of the 9 organisations in Wales have an aggregate score of grade 2 (competence plus), 5 have grade 3 (competence) and 1 has grade 4. This peer review pattern for all of the providers in Wales is not dissimilar to the distribution in England (albeit that of course there is a far larger number of providers in England).

It is concerning, though, that one of the providers with a Level 2 review has withdrawn all of its lawyers from Wales because of the collapse in referrals. It would be useful to consider whether there are possibilities for offering grants to

top up legal aid income, support expansion, or fund the employment of trainees, for the providers with the highest peer review ratings, on the basis that this would help to drive an overall increase in quality in immigration advice in Wales. This could perhaps be designed around client care, with financial support specifically covering additional communications with clients which are unfunded by legal aid.

Geographical accessibility of legal advice

Geographical patterns of need in Wales are changing. Since the start of this research, Welsh local authorities have taken in around 40 new unaccompanied children via the National Transfer Scheme, and all Welsh local authorities now have responsibility for unaccompanied children, which is a significant change. Since 2015, when the Syrian refugee resettlement scheme began, many UK local authorities have accommodated refugees for the first time, and those in Wales are no exception. The Afghan evacuation and various Ukraine schemes have similarly brought refugees into new areas of Wales. Meanwhile the EUSS for people whose rights derived from EU arrangements has radically changed the immigration status of large numbers of people throughout Wales. These factors have created immigration and asylum advice needs in new geographical areas of Wales for the first time. The ‘market’ is not capable of expanding (quantitatively or geographically) to meet this need.

Apart from the overall shortage of legal advice provision, transport infrastructure is one of the main barriers to access. Legal aid provision is concentrated in three of the main dispersal areas, Cardiff, Newport and Swansea, with only one caseworker in Wrexham, while EUSS provision and free provision outside the scope of legal aid is entirely based in Cardiff. Transport links from mid or north Wales to south Wales are described as ‘not great’ and ‘a considerable distance’, with easier access from north Wales to Liverpool or Manchester than to south Wales, but the North West of England and the western side of the West Midlands also have serious shortages of both legal aid and low-cost non-legal aid provision.

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This is particularly problematic for domestic violence cases, unaccompanied children and others who live outside those asylum dispersal areas in south Wales. Abuse survivors may also have no alternative but to travel back to the area where the perpetrator lives and works, or may face a long wait at a drop in, with children. The long journeys for advice have an impact on support workers and similarly on social workers supporting unaccompanied children. An MP from a non-dispersal area explained that they have nowhere local to refer constituents, but also have no local organisations to call to 'sense-check' a proposed course of action for a constituent, especially when deadlines are close.

Remote advice has been generally more available during the pandemic, but the Legal Aid Agency's (LAA) general model of legal aid remains one of face-to-face provision, on the solicitor's premises or an approved outreach location. Providers may now (since 2018) open as many cases as they wish from outside their own geographical area, but there are strict limits (re-imposed when pandemic restrictions were lifted) on the percentage of cases where they can have legal aid forms signed remotely, meaning most clients would still need to travel to their premises for at least the first appointment.

Earlier research on access to immigration advice (Wilding, 2022) suggests that remote advice is not the solution with particularly vulnerable groups in any event, firstly because it is difficult to build trust and rapport via video link. Secondly, it also places heavy demands on any facilitating organisation, which must provide a private room, a device and internet connection, sort and send documents to the solicitor, and give the psychosocial support that people need around the appointments with their lawyers. Thirdly, there is a deficit between demand and provision across England and Wales, meaning that remote access does not address the capacity problems. This said, interviewees in the current research described remote advice working well with domestic violence survivors who could access legal advice from the refuge or support organisation's offices, where their children can be looked after and they have a support worker with them, avoiding any need for travel back to the area where the perpetrator lives.

One solution may be some form of funded outreach, both for legal aid and non-legal aid work, though there is no surplus capacity available within Wales, so this

solution also requires capacity building. The North Wales Law Centre steering group hopes to provide a roaming service using a 'Justice Bus' and outreach locations, which has worked well in other areas of shortage (subject to being able to recruit caseworkers) though it may not be viable within current legal aid rules and funding structures.

This is likely to become more urgent in asylum cases, as the Home Office and outsourced accommodation providers seek to 'widen' asylum dispersal to more local authority areas across the UK. The National Transfer Scheme for unaccompanied children has already been made mandatory (on at least a temporary basis). The combined effect of these two changes is that there will be a need for asylum representation in geographical areas where it has never previously existed. The policy intention within legal aid is that 'the market' will ensure provision wherever there is demand, but the reality is that current market conditions will not attract providers into new areas of demand without additional funding or intervention and capacity building.

There is a duty on the Lord Chancellor to secure the availability of legal aid in accordance with the provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO, s1) and a range of powers to facilitate this including making grants and loans for provision of services, establishing a body to provide services, and making different arrangements for different parts of England and Wales, or different classes of case or persons. One of the recommendations in this report is that the Welsh Government explores, with provider organisations and others, the possibility of formally asking the Lord Chancellor to exercise these powers in respect of Wales, since it is clear that market forces will not address these shortages.

Specific groups

The groups below are those which were raised by respondents to the research. No other inequalities due to age, sex (other than the discussion around domestic violence below), race, religion, marital status, or pregnancy were identified, but it

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is impossible to state that such inequalities are absent.

Domestic abuse survivors

Domestic abuse was identified as a key advice shortage by a range of interviewees. There are two stages: the Domestic Violence Concession (DVC), which allows survivors access to public funds if they would otherwise be destitute, so they can flee the abuse and access refuges or other support; and the Domestic Violence Indefinite Leave to Remain (DVILR) application, which must be made within three months of receiving the DVC, which replaces a spouse visa and enables them to stay in the UK. Not all survivors will need the DVC, if they have funds or other support to flee the abuse. Legal aid is available for the DVILR application, provided the survivor meets the means threshold, but is only available for the DVC application if they apply for Exceptional Case Funding, yet that funding application is time consuming and rarely appropriate for someone needing to flee abuse urgently. As a specialist support group put it,

The lack of accessible immigration advice in Wales puts survivors at extra risk, and creates an extra burden on stretched specialist services. End to end for survivors, if they've approached a service and have NRPf or unstable status, to get their status clarified and apply for the DVC to access public funds quickly, there are inherent delays in getting them into the refuge, or if they have somewhere to stay but no access to food or heating.

The new North Wales Law Centre steering group has identified domestic abuse as a priority area in which there are real barriers to accessing legal support. Additionally, support organisations felt that some legal representatives question survivors in unhelpful ways, appear to blame victims, and have low skills in trauma-informed practice. The inability to access high-quality casework for the DVC is a barrier to accessing refuges, because refuges risk serious financial consequences if they accept a survivor who cannot access public funds. That is said to make refuges reluctant to accept women unless they are confident of being able to access a lawyer.

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There are also serious consequences for the survivor if she applies for public funds before being granted the DVC, and it is important that survivors fully understand how either an application for either DVC or public funds will (irrevocably) affect their visa. The lack of advice sometimes leads to well-meaning support workers trying to assist survivors but inadvertently putting them at risk. Advice at OISC Level 1 does not appear to be adequate for domestic abuse cases. Although technically permitted to do so, provided they understand the requirements, support workers believed few Level 1 advisers have the knowledge and confidence to undertake the DVC application which is the key to obtaining public funding for refuge places. For those reasons, it would be useful to develop a hub of Level 2 capacity within Wales to support DVC applications.

A local authority interviewee explained that the expertise problem also applies to local authorities:

“ It’s so wide and deep, the issue of knowing the legalities and the legal stuff around migration and service provision and contracting and everything. It does require a migration policy. We need a consistent approach to it and also to make the various parts of the council aware what they can and can’t do. ”

Interviewees also argued for better awareness in all local authorities around the NRPF condition and the fact that they are still able to give some forms of support. An in-house solicitor, shared by Welsh local authorities, might support with that.

A further issue is that not all visa types qualify for the DVC. For example, someone who arrived on a student visa could not access the concession and a refuge place. Third-country nationals with Pre-Settled Status because of a relationship with an EU national, but without EU nationality themselves, are likely to face similar difficulties. Even if there is a logic to limiting the DVILR visa to categories like marriage, which would normally lead to settlement, those on other visa types might still need refuge space, particularly if the abuser is controlling their money. Ideally, the Home Office would extend the availability of

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the DVC to survivors on other visa types. The Welsh Government should consider whether it could underwrite refuge places for those on other visa types.

Lesbian, gay, bisexual, transgender and queer/questioning (LGBTQ+) people

Interviewees believed that there is good support for LGBTQ+ migrants, asylum seekers and refugees in Cardiff, which sometimes includes giving evidence in court in support of their appeals, but that this might be in very short supply elsewhere in Wales, with fewer projects in Wales than in England to support LGBTQ+ people in the immigration and asylum systems.

The general shortage of asylum advice may impact particularly on LGBTQ+ cases, however, since the outcome of their applications and appeals depends heavily on personal credibility, requiring detailed witness statements. Representatives with limited expertise in working with asylum claims based on sexuality were said to have asked clients to undertake inappropriate or risky efforts to obtain evidence to support their claims.

A barrister interviewee said they had seen well-prepared LGBTQ+ cases from AJ, which indicates that these had either been merits failed by a legal aid solicitor or were fresh claims. A support group interviewee recalled supporting a complaint against a solicitor who appeared to be homophobic, but some interviewees felt the bigger problem was often housing, and being in shared accommodation with abusive or homophobic people.

No recourse to public funds (NRPF)

The interaction between immigration status and access to public funds is complex. The data does not exist to show precisely how many people have NRPF, or what it costs to support those without access to public funds who are

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eligible for accommodation and subsistence support. However, the costs of even this very basic support average about £10-12,000 per family per year, meaning that it is likely to be significantly cheaper to fund legal advice than to support even half a dozen families.

There is also a lack of awareness of the possibility of applying for lifting of the NRPF condition, let alone access to advice and casework for such an application. On that basis, it would be useful for groups of local authorities to pilot funding or commissioning legal advice as soon as possible and to calculate the savings in reverse, based on those they assist in the pilot period, rather than awaiting data on potential savings before taking action.

Disabled people

Accessibility is a problem, both in terms of public transport to reach lawyers' offices and in terms of the premises themselves, for those with physical impairments. One user interviewee described having to sit in a stairwell because their parent was in a wheelchair and the solicitor's office was on another floor, to which there was no wheelchair access. It meant they had to discuss their case while other people passed by on the stairs, which they described as 'undignifying'. The toilets were also not wheelchair accessible, but they had no meaningful choice of solicitors with more accessible premises, since they had had to rely on the Welsh Refugee Council persuading a solicitor to look at the case (which was successful after this solicitor took it on).

None of the advice user interviewees had intellectual impairments, though several had experienced some mental health problems during their asylum and immigration processes. Support organisations and legal advice providers argued that remote advice is particularly unsuitable for those with mental health problems, though travel is also difficult for them. One advice user described having developed mental health problems as they went through the process, leading at times to a belief that previous solicitors had somehow engineered the later refusal of a fresh claim, detention, or other solicitors refusing to take their

case. This inevitably made it more difficult to trust a representative. Legal aid does not cover any additional client care for those with mental health problems to support them to engage with their legal representatives more effectively.

For physically impaired people in the asylum system, housing emerged as the bigger concern than access to immigration advice, with two separate accounts of wheelchair users being accommodated in basement flats which they could not access effectively. This reflects the points made in the 'Public law in Wales' section. The lack of access to advice on asylum support and on challenging accommodation providers risks leaving vulnerable people in unsuitable accommodation.

Unaccompanied children

At the time of the research, the National Transfer Scheme for unaccompanied children had recently become mandatory, meaning all local authorities in Britain will be receiving unaccompanied children. The Wales Strategic Migration Partnership (WSMP) said that local authorities in Wales were instructed to take in around 14 children in 10 working days in February, and over 40 in total between February and May 2022. Although some children were placed out of area or outside Wales, the WSMP confirmed that every local authority in Wales now looks after at least one unaccompanied child, as of May 2022. This is a significant change from the earlier position when the majority were in the main asylum dispersal areas.

There will be a need for asylum legal advice for those children, while some might also need representation for age assessment challenges (where they have been accepted to be children pending an age assessment by a local authority, or their age is disputed after they are transferred to a local authority in Wales). The WSMP had not been made aware of difficulties in accessing legal representation as of May 2022, although this remains an evolving situation, and it is not clear whether all local authorities have so far attempted to refer the children in their care for legal advice. However, a range of organisations believed that expertise

in relation to unaccompanied children was lacking even in areas which had a history of looking after them, because the fluctuating number of children, combined with staff turnover, makes it difficult to retain the expertise among social workers and managers.

A number of interviewees commented on problems with age assessment of unaccompanied children in Wales, with one describing it as ‘a catastrophe’. One solicitor described encouraging other local authorities to contact Newport Council, as they ‘know what they’re doing’ and the solicitor was not supposed to advise them. It may be useful to find a way to formalise the sharing of best practice. This could be undertaken by a shared in-house lawyer, as recommended elsewhere in this report, or through a repository of toolkits, advice and other resources for local authorities.

There is a lot of support among interviewees for the idea of extending the guardianship scheme for trafficked children to all separated children, as happens in Scotland, to ensure that their best interests are identified and prioritised.

EUSS

It is important to take EUSS advice into consideration, although those using it are not obviously within the realm of forced migration, for two main reasons. First, immigration and asylum advice in Wales is now a very small field and resources (including human resources) given to EUSS advice and casework inevitably detract from resources available to legal aid and other free advice. Secondly, although (most of) the migration itself was not ‘forced’, those who came under the EU scheme are now forced into the sphere of immigration control, including some who are very vulnerable and a number who derived rights from the EU treaty and now find themselves with no immigration status. This may include people who arrived in Europe as refugees, but left the initial country of refuge to join communities in Wales and acquired rights under the EU Treaty, but struggle to evidence those rights within the settlement scheme.

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Those whose applications were refused have been advised to reapply, often by the Home Office, but this means they lose all rights to work or claim benefits. Administrative reviews, on the other hand, 'go into a black hole' with no timescale, but do keep their rights. Appeals are described as 'off the rails' with the Home Office routinely failing to upload evidence to the online appeals platform, causing delays. A further problem is that some applications were made without wider issues being identified, for example when a child might have been entitled to British citizenship or where there might have been a trafficking issue.

The commissioning of Newfields Law for EUSS applications and appeals is an example of a private firm providing directly commissioned and publicly funded advice. It will be necessary to maintain funding and support for legal representation for problems arising from the EUSS scheme as people pursue appeals, re-applications and upgrades from pre-settled to settled status, and as people struggle to prove their status digitally.

Consideration should be given to other kinds of advice which could be commissioned by Welsh Government or local authorities following this model. This said, it is important to recognise that there is a limited number of legal professionals in Wales capable of undertaking this expert work, and funding one organisation or issue frequently diverts capacity out of another.

The importance of legal literacy

One of the most commonly mentioned issues in the research was that both the asylum and immigration system and the systems for provision and regulation of legal advice are complex, and not readily understandable either for those caught up in the systems or for those supporting them.

User interviewees described how they received information from others: 'It's like word of mouth and what people are telling you, but that later turns out not to be accurate.' A support group worker explained this further:

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“ That is a thing, that the Kurdish community particularly, at least in Newport, is a very strong community, and they tend to stick together and look after each other, and that’s good but they’re not always great at reaching out, and you do get some urban myths going round. My colleague says to them, ... you can either believe your friend in the café or me, but this is my job and I’ve been doing it for ten years. ”

This is all the more problematic in communities with low levels of home-language literacy, where written information is inaccessible even if it is translated.

The consequences described by respondents include: people accepting an outcome which appears adequate but it not in fact the best possible outcome for them; an asylum applicant completing his own Pre-Interview Questionnaire (PIQ) without legal advice; clients not understanding the role of the legal representative (as compared with Migrant Help, accommodation providers, the Home Office, and support groups’ roles), and so using up lawyers’ scarce time asking for things the lawyer cannot do, but also not asking the questions that they do need to ask; people not knowing who their representative is, or even whether they have one.

Both users and support organisation staff found it difficult to understand the different forms of regulation, and who can lawfully offer which immigration legal services. One user in the focus group described having gone to someone she believed was a ‘solicitor’, and later discovering he only used office space beside a regulated firm, but by then he had disappeared and all of her original documents were lost. Although this is a criminal offence, both users and support organisations referred to apparently unregulated individuals charging for immigration advice services in Wales. One, in Newport, is said to complete applications for others, for a fee, but checking the box for an in-person application rather than one made by an adviser. A support worker was ‘trying to get his name out of’ service users. Another account concerned an adviser who was taking clients’ passports and holding them until the clients paid, even if they were unhappy with the service. An advocacy organisation worker explained that

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their own group is scrupulous about avoiding giving advice, but this leaves them somewhat deskilled and unable to identify with confidence the 'red flags' in conduct by other organisations or individuals.

Part of the solution to this is improved legal literacy, both for users and support organisations, to help them identify unregulated advice and know how to report it. This needs to be undertaken through both support groups and communities, including knowledge about the immigration rules, processes, and who can legally give advice or offer casework. This might include a simple toolkit for checking whether a person is accredited to give legal advice.

Additionally, a typical comment is that, 'People need an advocacy worker or support worker who can guide them through the process.' There is already a programme to support this; Refugee Action's Asylum Guides programme, which recruits and trains people who have been through the asylum process to support others through it. Both users and support workers thought that such a system would be extremely positive for Wales, as it could combine accurate information with community trust and user expertise. The programme already exists, so would not need developing from scratch, and could potentially be integrated into the work of the successor to the Asylum Rights Programme. The Refugee Action scheme runs on volunteers but consideration should be given to paying for the time and expertise of those with the right to work.

User views

Users' comments about their experiences of legal advice are integrated throughout the report, but it is useful to include a more focused summary of the issues which they raised. The advice user interviewees ranged from those who were newly arrived on small boats to one who had been in the UK for almost 19 years. Some had arrived as students or on work or visit visas, and only later found themselves in the asylum system because of changed circumstances in the country of origin, while one had been brought in as a child and had indicators of possible trafficking. Others, having been refused asylum, had obtained leave

under long residence and family provisions and were on the ten-year route to settlement, continuing to need legal representation for renewal applications or for refugee family reunion. One interviewee was the sole member of their family who missed out on leave to remain because the minor children qualified for leave, which meant their parents qualified for leave, but this individual did not, because they were over 18. This illustrates some of the difficulty or artificiality of distinguishing between ‘forced’ and ‘unforced’ migrants, given the way that people move between categories.

Good client care is extremely important to users. There was praise for some providers, for responding promptly, being well-organised, and explaining matters. One interviewee described how their solicitor had encouraged and supported them to talk about their experience of detention and torture in the home country, preparing them well for the interview and answering all of their questions about the process. This interviewee had, before and since obtaining refugee status, supported others through the process, both helping them to find representation and offering voluntary support with interpretation when they make first contact with solicitors. Through this, they had seen representatives of varying skill, explaining that some would carefully probe what they were told, and support clients to open up about their experiences, while others took a first response at face value and failed to prepare clients for the interview.

Nevertheless, client care emerged as one of the biggest sources of dissatisfaction. Users said that some representatives do not reply to messages or take a long time to reply, are rude or do not appear to care. Although there is a perception among users that private advice is likely to be better than legal aid, many of those who paid for representation also had bad experiences and poor client care, including apparent overcharging, not being given receipts, no application actually being submitted, slow responses, and rudeness.

The interview data from advice users emphasises the difficulties users face in understanding whether or not they are receiving good quality advice. One, for example, praised the solicitor for pursuing their case all the way to appeal, but they had succeeded on appeal using evidence which was available at the time of the application, which suggests the lawyer had not done all that they should

have at application stage. Conversely, another was critical of two solicitors for refusing to make an application which could not possibly have succeeded. Another explained that they had been given conflicting advice by different representatives and did not know which advice was correct. Some referred to legal aid providers on the Migrant Help list as 'Home Office solicitors', indicating that they did not fully understand the relationships.

Those advice users who had arrived in 2017 and 2018 described Migrant Help offering them a list of legal aid providers to choose from and then calling on their behalf to make a first appointment. Those who arrived more recently said they were given a list, but did not have any assistance to make an appointment, unless and until they went to the Welsh Refugee Council. This raises the prospect that some people are simply unable to find themselves a representative with so little support, and is consistent with provider accounts of a collapse in referrals despite continuing need. Several advice users pointed out that they had no other information or knowledge about any of them on which to base a choice. One had asked others in the hostel for recommendations, but the other residents had no meaningful information about the solicitors either.

A small number of interviewees expressed a preference for a lawyer who speaks their own language, while several said that friends (usually living outside Wales) had opted for a lawyer who spoke their home language. Interviewees felt that these home-language lawyers were not always doing good quality work. However several interviewees reflected that they had only been able to find and work with lawyers effectively because they spoke good English already, or that this had improved as their ability to speak English improved, as language barriers make it more difficult to access legal advice, even if an interpreter is available for actual appointments. Some users had experienced problems with interpretation, which was either not made available or was not of adequate quality. In one case, the interpreter for the asylum interview spoke the wrong dialect, resulting in numerous apparent inconsistencies in her account, and the Home Office refusing the asylum application, but the representative did not identify this.

Those who had gone to appeal, and were represented by a barrister, had met

them only a few minutes before the hearing. This is inevitable, since legal aid does not normally cover a conference before the day of hearing, and given the dearth of Wales-based immigration barristers. The rise of remote meeting technology might allow for more pre-hearing meetings to take place online, but these are still unfunded unless providers receive some kind of grant to cover additional work on client care.

Some had experienced long journeys for legal advice: for example, from north Wales to Walsall, or north Wales to south Wales, and interviewees described friends having to travel from Wrexham to London. One explained that their solicitor would not continue representing them once they were moved from Yorkshire to Cardiff for asylum support accommodation. Although these examples were pre-pandemic, the LAA has decided to require providers to return to obtaining physical (rather than electronic) signatures on legal aid forms and see clients in their offices in a high percentage of cases, so these long journeys are likely to continue.

User interviewees felt that support organisations were very important and worked hard for them. These included Welsh Refugee Council, the British Red Cross, Bawso, and a number of smaller organisations like Ethnic Minority and Youth Support Team (EYST) and the African Community Centre, which played an important role in helping them access legal advice, among other things. The cohesive and collaborative network in Swansea received particular praise from users. Several interviewees had positive experiences of volunteering with those organisations and others, which had helped with their mental health, which they felt in turn improved their abilities to engage with their legal cases.

Access to legal aid was a problem in one case. The applicant lost her right to work when her asylum application was refused, and therefore lost her accommodation. She moved into the home of a relatively new boyfriend, and then learned that the legal aid means assessment would take into account his earnings and capital as being available to her, with the expectation that he would contribute to her legal costs because he had offered her shelter. He had agreed to pay some of her legal costs, which left her feeling obligated to him. This makes women more vulnerable to exploitation or abuse if they are dependent on

another person for both subsistence and access to legal advice.

Most users talked about not knowing their legal rights or understanding the procedures in respect of asylum or immigration, nor around other services, like their entitlements to health care, housing and education. An element of this is the fear of complaining. Users said that they had not complained about lawyers, even when they were unhappy, because they were afraid it would adversely affect their immigration or asylum case, by marking them out as making trouble. They also did not understand they could complain, or how to do so, or did not know which advice was right and which wrong, to know which lawyer to complain against.

Debt was a problem for some interviewees, where they had been refused asylum and had to make other applications. One explained they were still paying instalments for the legal fees for their application for leave to remain, but they were already coming up to renewal (at the 2.5-year mark), where they would also have to pay at least some of the Home Office application fee as well as the legal representative's fees. Nevertheless they preferred to pay a lawyer than risk doing the application themselves and having to deal with the Home Office directly:

“ Money's tight, but I would pay someone £400, just to do it for me. Because the Home Office here, they always hide things from you. It's not straightforward. You see, everything could be alright, but if you make one mistake, you know, everything goes in the water. ”

This emphasises the importance of free or low-cost advice outside the scope of legal aid for people who are outside the asylum process but nevertheless have insecure immigration status. This family will be left with no leave to remain and no right to work or access to public funds if they fail to renew their leave on time. They should qualify for at least a partial fee waiver for their renewal application (on application fees totalling well over £5000) by virtue of their low income, but the fee waiver application would itself be a more complex piece of work than the renewal application, and therefore costly. They were unaware, at the time of the

interview, of any possibility of a partial fee waiver. In the context of an estimated 9,000 undocumented people in Wales, including 3,500 children, this family's struggle highlights a much larger problem.

Other issues, not directly related to legal representation, include Home Office delays, which were one of the main sources of unhappiness and real distress. Many users recognised that this was outside the control of their legal representatives. Many of the interviewees were frustrated at the lack of right to work during the protracted asylum application process, forcing them to depend on handouts when, as one woman put it, 'asking for things is not my thing'. Some had been given permission to work but only in jobs on the shortage occupation list. Two had experienced homelessness during the move-on period after being granted asylum, while another two had periods of homelessness after being refused asylum or having appeals dismissed. One was accommodated after she became pregnant, and the other after submitting fresh claims. Two user interviewees spoke about how welcome they felt in Wales, explaining that the people of Wales had 'embraced us'.

What works well in the provision of immigration legal advice to forced migrants living in Wales?

Interviewees believed that 'most people' do find a representative for initial asylum applications in Wales, despite the difficulties in accessing representation for fresh asylum claims and other matters, and the problem of clients being dropped before appeals. Some of the legal aid providers in Wales were described as doing good quality work (while others are 'best avoided'), and the networks between legal representatives and support organisations are working well in some well-established areas.

In one dispersal area, a support organisation interviewee felt that the legal aid providers generally do a good job (within the constraints of legal aid) because there is a level of accountability within the local community, because they can generally work out from a user's description which representative they are with.

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The same could not be said when the representatives were in England. Interviewees also described a close network with co-operation between support organisations, the local authority and the MP's caseworker, which combined to give fairly holistic support around access to advice, chasing the Home Office, and preventing homelessness.

In another dispersal area, interviewees were positive about the recent (2018) arrival of a legal aid provider, having previously had to travel out of the area for representation, though they recognised the precarity of relying on a single caseworker for the entire area. Cardiff is described as having more providers and support organisations than elsewhere, and several interviewees cited Asylum Justice as a particular strength, albeit that they felt it needs far more capacity than it has.

The 2 legal aid providers in a third dispersal area received praise from interviewees, although there is not enough provision to meet the need in the area. It also has 'very good partnership of organisations working together', which 'is so well established that people know where to refer to.' This 'took set-up work at the beginning... to pull it all together' but no longer needs strong co-ordination. This perhaps offers a model for new and emerging dispersal areas within Wales, for understanding the level of input needed to get a network well established, though it is unclear whether it is feasible to establish a similar network in a small dispersal area.

What gaps exist in this provision (to include mapping the availability of current immigration legal advice services on offer to regular migrants in Wales)?

Particular shortages exist in Wales for the following matters:

1. domestic violence cases, particularly for the DVC, and there is no provision

for those who are just over the legal aid means threshold but are nevertheless unable to afford the cost of legal support to make an application under the domestic violence provisions. This does appear to result in some women being unable to escape abusive relationships

2. fresh asylum applications, where an initial asylum claim has been refused, sometimes because of poor quality legal provision (whether in Wales or not), or where circumstances have changed in the home country
3. all immigration-related public law matters, including age assessment challenges for unaccompanied children and issues around local authority support
4. provision for matters outside the scope of legal aid, particularly applications for leave to remain for people who are undocumented, or to extend leave to remain on the ten-year route to settlement. This shortage of non-legal aid advice arises in many parts of the UK, but there is a severe shortage in Wales
5. prisons. There were 217 foreign nationals in prison in Wales as of December 2020, with no routine access to immigration advice, and significant barriers for legal aid providers to take their cases. The Welsh Refugee Council has begun working with the Home Office and prison service to build capacity among prison staff to understand the different possibilities facing foreign nationals, as well as seeking to develop ways of supporting released prisoners who may not (or no longer) have a secure immigration status, 'Otherwise we're just driving more irregularity and homelessness and criminal behaviours by not intervening'

There is also a severe shortage in all parts of Wales apart from the area around Cardiff, Newport and Swansea. This has become more relevant as local authorities throughout Wales have taken in resettled refugees under the Syrian, Afghan and most recently the Ukrainian schemes, as well as EU nationals or their family members beginning to encounter immigration legal problems. One MP felt that all local authorities are now seeing immigration issues, but that smaller authorities would never be able to employ their own immigration specialists. They believed that an in-house solicitor shared by all authorities would very significantly support those local authorities.

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What challenges, barriers and/or facilitators exist in the provision of immigration legal advice to forced migrants living in Wales?

Many of the challenges and barriers apply throughout England and Wales, and are briefly set out in relation to the impact of UK government legal aid cuts below. There are, of course, wider social and cultural barriers to access relating to power relations, race, class, and so on, but discussion of these is beyond the scope of this report.

Funding cuts and burdensome auditing have reduced the number of providers, limiting access to legal aid provision, with large geographical areas of advice desert in immigration and other social welfare areas of law. Alongside this, cuts to local authority funding have caused cuts in advice services, again across the board in social welfare, causing the closure of many not-for-profits and law centres. Speakeasy in Cardiff is the only currently operating law centre in Wales, and it does not do immigration work at present. This is exacerbated by poor transport links from some parts of Wales, making it difficult for people to access advice if they live outside the areas where it is available.

Aside from funding, the immigration and asylum processes implemented by the UK Home Office drive up need for immigration legal advice. The asylum system is complex and increasingly slow, meaning each individual is likely to remain for longer in the asylum process, in asylum accommodation, and in the caseload of a legal representative. Given the high grant rate for certain countries, many of these people could be granted asylum quickly, moving into communities, freeing up asylum support accommodation and legal advice capacity for genuinely complex cases. The hostility of the immigration system adds to advice demand: people dare not make their own applications for fear that a single error will jeopardise their leave, or at least their progress along the ten-year route to settlement. The 10 year route, with expensive renewal applications every 2.5 years (with limited new exceptions) drives a relentless demand for immigration advice and casework which no amount of capacity building will ever fulfil. For a

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more detailed discussion of this issue, see Wilding, Mguni and Van Isacker (2021).

All of this, in turn, drives demand for the work of MPs and their caseworkers, who become the last resort when people cannot get responses from the Home Office or cannot access legal advice. When organisations and MPs have no real referral options, this leads to misplaced signposting, where people are sent to organisations which cannot help or are already over capacity, using up further capacity in turning people away. For example, Asylum Justice received two referrals in a month for criminal matters, where the individual happened to be a migrant.

Sustainable funding is an important part of the solution, but it is not a quick solution because the advice sector has been badly depleted and there is no pool of qualified caseworkers or solicitors waiting to move. The sector needs strategic re-growing, through financial support which is secure over a long enough period to train new caseworkers and lawyers, or at a high enough level to attract them to relocate. One possibility is that there are lawyers willing to move out of legal aid into grant-funded organisations, to continue doing immigration legal advice work while escaping the administrative burdens of legal aid, but this needs to be carefully structured so as not to undermine legal aid: 'use it or lose it', as several interviewees commented.

This discussion highlights the complex issues around devolution and reserved matters, which also arise in Scotland. The overarching policy to become a Nation of Sanctuary is frustrated by the UK government's hostile environment policies, much as Jones and Wyn Jones (2019) found that Wales' progressive policy intentions in criminal justice are frustrated by policy from Westminster. Although both justice and immigration are reserved to Westminster, this also impinges on specific issues such as age assessment of unaccompanied children, since the Children Act which governs this in England does not apply in Wales, but there are no firms doing age assessment judicial review work in Wales, which has hampered development and understanding of the law relevant to Wales. It would be useful to investigate in the migration context precisely where Wales has powers to depart from UK policies on benefits, housing, social

care, and so on, perhaps through an expert research and advisory group.

How adequate and timely is immigration legal advice for those with varying immigration statuses and those with particular vulnerabilities or with protected characteristics, such as migrants that are children, LGBTQ+ or disabled?

The position for some specific groups is dealt with in detail in the Findings section above. There is variation across Wales, because much depends on individual legal practitioners' and support workers' knowledge and expertise. Many of the problems are systemic: the Independent Chief Inspector of Borders and Immigration found that the Home Office deals inappropriately with claims based on sexuality, including by stereotyping, viewing sexually explicit material, asking questions of substance in the screening interview, and asking inappropriate or sexual explicit questions in the interview (Vine, 2014; Rainbow Migration, 2018). Legal aid practitioners' ability to support clients and challenge this is negatively affected by legal aid cuts, as explained in the following section. Similarly, the bigger problem for disabled migrants may be housing, rather than the asylum or immigration claim per se, but in circumstances where there is very little public law provision or asylum support advice, which may make it difficult to challenge the decisions at the root of the housing problem. The fragmentation of legal advice detracts from the ability to deal holistically with cases of intersectional need arising from systemic problems.

As for support for those with varying immigration statuses, there is very little immigration advice and casework available in Wales for people with a status other than first-time asylum seeking. People with a visa but seeking support on a domestic violence case, or people outside the asylum system and with no leave to remain, face an almost total lack of availability of immigration advice. So do 'failed asylum seekers' making later applications based on family or private life or long residence. The same applies to those needing to make fresh asylum

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claims after a refusal. If (free or low cost) advice is available at all, it is often subject to a long wait and dependent on the capacity of one Level 3 and one Level 2 organisation, both based in Cardiff, or on persuading a private firm or legal aid provider to work pro bono. This drives debt, poverty, destitution and irregularity within communities in Wales, and affects numerically the largest group of people.

What is the impact of the UK government's decision to reform legal aid provision on the availability and adequacy of immigration legal advice provided to forced migrants living in Wales?

The impact of legal aid cuts in 2013 has been severe throughout England and Wales. The removal of almost all non-asylum immigration work from the scope of legal aid had a profound effect on both users, who were no longer able to access legal representation to regularise their immigration status, and on providers, who lost a large proportion of their work. Although they were poorly paid, non-asylum cases tended to be quicker to conclude, close and bill, so they assisted with cash flow.

Also in 2013, administration of legal aid moved from the Legal Services Commission to the Legal Aid Agency, which implemented a 'zero tolerance' auditing regime after its predecessor had its accounts qualified by the National Audit Office for four successive years. This auditing is wholly focused on financial issues and procedural matters, such as whether the provider has evidence of the client's means on file and whether all boxes in the assessment are ticked, including in the 'partner' column, even when there is no partner. One of the Welsh legal aid providers was almost forced to close because of auditing errors by the Legal Aid Agency, which resulted in the Agency refusing to pay for work done for a period of time. For providers who have withdrawn from legal aid across England and Wales, auditing was an even more significant factor than

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low fees (Wilding, 2021, 2022).

These cuts followed a move to fixed fees in 2007, as part of the marketisation of legal aid procurement, and a ten percent fee cut in 2010. The Immigration Advisory Service went into administration in 2011, closing its 14 offices, including in Wales and the South West and North West of England, which also served people living in Wales. Refugee and Migrant Justice (formerly the Refugee Legal Centre) went into administration the previous year and, although it did not have any offices in Wales, it had a well-regarded training programme for new caseworkers which (unintentionally) operated as a resource for the entire refugee law sector. Its closure gave rise to a growing recruitment crisis throughout England and Wales, which has been particularly difficult to address in Wales because there are fewer training opportunities, fewer supervisors, and fewer organisations which can afford training, meaning that Welsh graduates have to go elsewhere to qualify as lawyers.

As set out in the 'Legal aid provision' section above, this has left few providers in Wales, and these have had to limit legal aid capacity to cap their financial losses. The unpaid administrative burden on providers, excessive risk and low fees mean that providers have to cross-subsidise immigration legal aid work with other income sources and this is the reason why most do not use all of their allocated 'matter starts' or new cases per year (Wilding, 2019). Consequently, Wales has lost one fifth of its provider offices since the 2018 round of contracts (3 out of 15), including the Duncan Lewis office in Cardiff which was one of the largest providers for Wales and absorbed some of the unmet demand in the South West of England.

For clients, the cuts mean that 1) there are fewer legal aid providers available (although 2018 marked the entry of the sole provider in north Wales); 2) that those providers have less legal aid capacity; 3) that people 'get less time with their solicitor', as a support organisation put it, because lawyers' work is constrained by legal aid fixed fees; and 4) that many people find themselves outside the scope of legal aid altogether, or must first secure Exceptional Case Funding, which has been shown to be inadequate as a protection against breaches of human rights (Marshall, 2020).

The role of Welsh Government, local authorities and public service partners in providing a strategic and co-ordinating lead to ensure sufficient, quality immigration legal advice services to forced migrants living in Wales

First, it is not necessarily useful to distinguish between ‘forced’ and other migrants in this context. Several respondents criticised the primary focus on ‘forced migrants’ in this research. The distinctions are not as clear cut as might be expected, especially as people move between categories, with risks of exploitation arising because of people’s immigration status. Welsh Government should therefore aim to provide a strategic lead in ensuring access to advice for all migrants who find themselves in a position of constrained choice, and with inadequate means to secure privately funded immigration legal advice.

The Welsh Government’s efforts to implement creative and compassionate policies to circumvent the worst effects of the UK government’s hostile environment policies were recognised and acknowledged, as are the constraints of funding and devolution. Interviewees also commented on the positive impact of Welsh Government funding on support organisations, though this had less of a direct impact on legal advice (with the important exception of Asylum Justice). However, there are frustrations around what are perceived as delays in implementing solutions because of a lack of data. On some issues, like the likely cost-benefit of commissioning advice for people with no recourse to public funds, clear data will be difficult to collate without piloting the proposed solution and identifying savings and benefits accruing during the pilot.

Another source of frustration among the migration support sector and some local authorities is the lack of specialist expertise within many local authorities, particularly social services. It is acknowledged that, for example, children’s services are overwhelmed with demand and it is understandable that they cannot maintain the required level of expertise when numbers of

unaccompanied children and care leavers fluctuate within each local authority. The most useful role for Welsh Government here could be to take on an in-house legal adviser or solicitor, or create a centre of excellence, accessible to all local authorities in Wales to provide legal updates, advise on correct procedures, and ensure that they have access to the level of expertise needed. It was also argued by interviewees that the Welsh Government needs to legislate to ensure adequate expertise in local authorities, rather than only providing unenforceable guidance.

The Regional Advice Networks do not appear to have a significant impact on immigration legal advice, and do not have enough specialist immigration input to do so, but interviewees did not think that any of the immigration advice organisations had capacity to take a meaningful part in the networks. As one organisation put it, any partnership or network would need to bring in both funding and capacity: funding alone will not bring in a rapid increase in capacity if there are no qualified lawyers and caseworkers to employ, and increased capacity is not sustainable without increased, stable, long term funding.

Limitations and further research

The data collection took place over a relatively short period (February to April 2022) during what might be considered an unusual period of time, following two years of pandemic-related instability. Asylum and immigration procedures, asylum accommodation, Tribunal procedures, and methods of delivering legal advice and other support have all undergone significant changes, whether temporary or transformative, and much remains uncertain at the time of writing.

The research offers a detailed picture of the situation as of May 2022, but it would be very useful to monitor it with longer term research that is capable of identifying new gaps in access to advice, as well as any improvements arising from interventions and strategies adopted. As a larger number of local authorities in Wales gains populations of unaccompanied children and resettled refugees, and as people throughout Wales have new needs for advice and

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support around pre-settled status or a denial of any settlement status, it would be important to include these new stakeholders in follow-up research.

Introduction to the recommendations

An aim of this research is to propose viable, evidence informed actions and recommendations for future policy development which could improve the immigration legal advice services provided to forced migrants living in Wales and address the gaps identified in this review. The recommendations include a number of proposals for the Welsh Government and local authorities to consider, all of which have costs attached and some of which would require consideration of rules on fair procurement. There are also recommendations for other bodies including the Home Office and Legal Aid Agency on matters which are outside the devolved powers of the Welsh Government. These are matters on which the Welsh Government could consider lobbying the relevant bodies, which would either reduce the need for immigration legal advice or help to increase provision in Wales.

[Square brackets indicate the section of the report to which the recommendation relates.]

Funding, commissioning, and building capacity of immigration legal advice

Recommendation 1

Consider employing a shared in-house immigration solicitor for Welsh local authorities. This could be on a similar model to that in the East Midlands Councils, where eight authorities share an in-house solicitor based in the region's Strategic Migration Partnership, who advises social workers and others on immigration legal issues. This could cover identification of children in care

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with an immigration or nationality issue, advising on age assessment procedures, providing information on the authorities' powers and duties in respect of people with No Recourse to Public Funds conditions, employment rights, rights of access to domestic violence refuges, and so on. This could build on Newport Council's model of employing an immigration caseworker, who cannot advise clients directly, because the council as an entity is not regulated to give advice, but can advise the council, and identify and signpost people with immigration issues. This is likely to be particularly useful for smaller local authorities outside the main dispersal areas which do not have the resources to develop their own expertise, as immigration advice need grows in new areas.

Recommendation 2

Commission legal advice for matters which fall outside the scope of legal aid, especially around people who have No Recourse to Public Funds, need the Domestic Violence Concession, are homeless, are looked-after children, or have no leave to remain. The Nation of Sanctuary Plan mentions the risk of exploitation for people with NRPF but does not mention the role of legal advice in helping prevent this. [Specific groups; Legal aid provision]

Recommendation 3

Consider supporting existing legal aid providers to prevent further provider loss. This could include grants to providers with peer review scores of two (or higher) to protect the highest quality provision by cushioning financial losses from legal aid work, or 'client care grants' to support additional communications with clients which are unfunded on the legal aid fixed fee scheme. [Legal aid provision; Size and nature of the immigration legal profession in Wales]

Recommendation 4

Fund trainees, both in legal aid providers and non-legal aid organisations. The

costs of training include trainees' salaries, supervision, courses and exams. Good quality, effective supervision is expensive for organisations funded by grants or legal aid. The Scottish government recently offered funding for legal aid trainees in private firms and not-for-profits and may have learning to share. [Size and nature of the immigration legal profession in Wales]

Addressing geographical gaps

Recommendation 5

Support provision in north Wales, which is particularly poorly served. There is currently a single immigration legal aid caseworker in the whole of north Wales, operating without even administrative support. There is also a project to set up a North Wales Law Centre, which at the time of writing has funding to recruit a development manager and intends to provide immigration advice from different locations. Options for securing provision in the north include funding administrative or other support for the sole legal aid provider and supporting the new Law Centre's ability to recruit an immigration lawyer, perhaps to do work outside the scope of legal aid. [Geographical accessibility of legal advice]

This might be achievable by requesting the Lord Chancellor / Minister of Justice to exercise the power in section 2 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 to make grants and other special arrangements for different parts of England and Wales and different areas of law, in order to fulfil the duty to secure the availability of legal aid in accordance with the Act. This power has never been used and there is no formal procedure for requesting its use. However, such a request should be approached in consultation with experts in public law, with a view to challenging any refusal or non-response. [Geographical accessibility of legal advice]

Recommendation 6

Minimise recourse to remote advice, which is not an adequate solution to the geographical shortages, nor is it good trauma-informed practice. This can be achieved by ensuring adequate provision of face-to-face advice. [Geographical accessibility of legal advice]

Addressing case-type gaps

Recommendation 7

Treat domestic abuse survivors as a priority category for improving access to legal advice within or alongside forced migrants, regardless of their status or mode of arrival, because i) they have specific immigration advice needs which are not always met through legal aid (the DV Concession application and those who are just over the means threshold); and ii) they do not have the immediate access to accommodation and subsistence support that asylum applicants do.

In respect of legal advice, this might include underwriting refuge spaces for a period of time to enable survivors to access legal advice and the DV Concession, and seeking funding from a range of sources including the Police and Crime Commissioner, Levelling Up funds and other 'pots' to fund legal advice.

As with other issues, this could be implemented as a pilot on the basis of already-available information, while collecting data during that pilot to evidence the benefits and financial savings. [Specific groups: Domestic abuse survivors]

Information, support and legal literacy

Note that all of these proposed actions will require regular review and updating.

Recommendation 8

Work with support groups to build legal literacy resources both for migrants and for professionals working in the support sector. Both groups expressed a lack of understanding of the asylum and immigration systems, rights and entitlements to legal advice and other services, the standards and scope of work which could be expected from legal aid and other lawyers, and the consequences of making complaints. The in-house solicitor/immigration advisor (see recommendation 1 above) should also have a stakeholder engagement role via Wales asylum and migration forum, to support increased awareness around legal advice and literacy. [The importance of legal literacy]

Recommendation 9

Legal literacy work should include work with schools, health settings and other public services to support families and individuals with an immigration status problem to understand how to access support (before crisis point), to overcome some of the problems with exploitation and people receiving inaccurate advice and information through their communities. A variety of approaches and methods should be explored to maximise accessibility, recognising that translation of written information will still exclude some people. [The importance of legal literacy]

Recommendation 10

Provide an up to date list of legal aid providers on the Sanctuary website, indicating which ones can do judicial review work. A number of support

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organisations do not know where to find comprehensive information about legal aid provision in Wales and this would be a simple action. [The importance of legal literacy]

Recommendation 11

Provide easily understandable information about unregulated advisers on the Sanctuary website, including a toolkit showing how to check whether an adviser is regulated, and ‘red flags’ that indicate they might not be. This could be part of a wider set of legal literacy materials around what to expect from a legal aid representative or other adviser and what is outside their remit. [The importance of legal literacy]

Recommendation 12

Make available independent information about people’s right to complain about legal representatives where needed, the appropriate standards of service to expect, and the consequences of complaining; and consider possible sources of funding to cover support with complaints. [Quality]

Recommendation 13

Ensure wide dissemination of the WSMP’s Asylum Dispersal Toolkit to ensure local authorities entering into dispersal understand the importance of access to legal advice. Similarly, other toolkits which already exist or are prepared in the future should be made available in a single repository where local authorities can easily access resources and information. This may be a role for the Wales Strategic Migration Partnership (WSMP), the Welsh Government, the Wales Sanctuary Seeker Support Service, and/or others.

Recommendation 14

If not already in progress, urgently ensure that support and information are available for local authorities which are now responsible for unaccompanied children for the first time, including how and when to access high-quality legal representation for the children in respect of their asylum applications and any age disputes.

Recommendation 15

Create a toolkit for identifying potential public law challenges to unlawful decisions by public bodies, and sources of advice, information and representation to pursue these. [The importance of legal literacy]

Recommendation 16

At the same time, there is a need for wider learning in response to any public law challenges which are received, particularly where these are conceded by the defendant public body. Rather than simply conceding the individual case, it is important that there are consequent changes in the way that policies are applied, to avoid repetition of the same errors. [Public law in Wales]

Recommendation 17

Consider joining Refugee Action's Asylum Guides programme, either with the Welsh Government co-ordinating or commissioning an organisation to do so. This is a mentoring programme in which those with lived experience are trained and then matched to a person going through the system. This could be extended to non-asylum matters as well. [The importance of legal literacy]

Recommendation 18

Consider creating a guardianship scheme that includes all unaccompanied and separated children, similar to that currently in place for trafficked children in Wales and for all unaccompanied children in Scotland. [Specific groups: Unaccompanied children]

Recommendations for other bodies

As well as direct recommendations to these bodies, these should be seen as campaigning and lobbying points for the Welsh Government.

Home Office

Recommendation 19

Reduce the delays in the asylum system, to ease the demand for legal aid providers' work. This should include effective triaging to identify cases which can be quickly granted (in a non-detained setting), where applicants come from a country with a very high grant rate.

Recommendation 20

Reduce the costs of applications for initial leave to remain, further leave to remain and citizenship, to help reduce irregularity, destitution and debt for people resident in Wales, and reduce the need for legal casework on fee waivers, which is unsustainable given the very limited availability of legal advice in Wales.

Recommendation 21

Work with local authorities and the WSMP to understand the evolving geographies of advice need driven by the Widening Dispersal plans and National Transfer Scheme, and fund independent advice in parts of the country where it is not currently available. [Geographical accessibility of advice; Legal aid provision]

Recommendation 22

Improve public communications so that it is easier for users and legal advisers to contact the Home Office, track progress on cases and find out whether any further evidence or actions are needed, to reduce demand for work by legal professionals and MPs' caseworkers, and to alleviate the need for schemes such as the Navigator pilot.

Legal Aid Agency, Ministry of Justice and Lord Chancellor

Recommendation 23

Implement a scheme for making additional payments to cover client care and communications during periods of delay by the Home Office, in recognition of the problem that all financial risk caused by these delays (caused by a government body) is placed on legal aid providers rather than other government bodies.

Recommendation 24

Reduce the unpaid administrative burdens on legal aid providers in order to

maintain the current provider base, and increase legal aid funding at least in line with inflation.

Recommendation 25

Exercise the power in section 2 of the LASPO Act to make grants and other alternative arrangements to secure the availability of legal aid in areas of extreme advice shortage, such as mid and north Wales.

Acronyms and glossary

AJ: Asylum Justice

DVC: Domestic Violence Concession

DVILR: Domestic Violence, Indefinite Leave to Remain

EUSS: EU Settlement Scheme

FOI: Freedom of Information (request or response)

LAA: Legal Aid Agency

LASPO: Legal Aid, Sentencing and Punishment of Offenders Act (2012)

NRPF: No Recourse to Public Funds

OISC: Office of the Immigration Service Commissioner

WSMP: Wales Strategic Migration Partnership

Matter Starts: England and Wales only. New cases. Each provider has a maximum number of matter starts which they are permitted to open in a year. In practice, they can usually obtain more on request. The minimum allocation in

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immigration is 150. In some areas of law, a provider's allocation will be reduced if they do not use them all. This does not happen in immigration.

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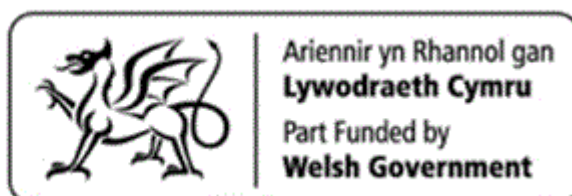
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About this report



The Migrant Integration project is part-funded through the European Union Asylum Migration Integration Fund.

Views expressed in this report are those of the researchers and not necessarily those of the Welsh Government.

Author: Wilding, J (2022).

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